## STATE OF SOUTH DAKOTA

## OFFICE OF

## THE ATTORNEY GENERAL

November 1, 2012

The Honorable Peggy Gibson State Representative 1010 Valley View Court Huron, SD 57350-4221

OFFICIAL OPINION NO. 12-04

Re: South Dakota Municipal League Action on Referred Measures

Dear Representative Gibson,

On October 17, 2012, my office received correspondence from Secretary of State Gant forwarding your question regarding the legality of the South Dakota Municipal League's advocacy of a position on Referred Law #14.

#### Ouestion:

Whether the South Dakota Municipal League's use of funds, derived in part from the membership dues of its member municipalities, to advocate for South Dakota Referred Law #14 is a violation of law?

### Answer:

No. The more specific provisions of SDCL 9-17-1 and 9-17-3 authorize the South Dakota Municipal League to advocate on measures beneficial to municipalities. These statutes supersede the more general provision of SDCL 12-27-20 prohibiting municipalities from expending public funds to advocate a position on a referred or initiated measure.

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#### Facts:

The South Dakota Municipal League is a non-profit association of municipalities. It is supported by dues from its member municipalities, advertising revenue from its magazine, and other funds received from business activities the association conducts (such as insurance). Approximately one-third of its funds are membership dues.<sup>1</sup>

The South Dakota Municipal League has historically been politically active. Indeed, my predecessor Attorney General Larry Long addressed a question similar to the one that you raise in an opinion letter dated October 27, 2004, before the enactment of SDCL 12-27-20. Attorney General Long's 2004 opinion states "[The Municipal League's] executive director has routinely appeared before the Legislature and speaks out on issues of concern to member municipalities." General Long's 2004 opinion finds that, based on SDCL 9-17-1 and 9-17-3, the Municipal League's activities advocating on an initiated measure was not an illegal expenditure of municipal public funds.

# In re Question:

Your question raises an issue of statutory construction. Rules of statutory construction require the intent of the law be ascertained by the language expressed in the statutes as a whole, including enactments relating to the same subject. In re Estate of Hamilton, 814 N.W.2d 141, 2012 S.D. 34, ¶ 7 (S.D. 2012). Statutes of specific application must be construed to take precedence over those of general application. Hamilton at ¶ 12. Words of a statute must be read in their context and with a view to their place in the overall statutory scheme. One statute on a topic may not be selected with disregard to another statute that modifies or limits its effect or scope. Expungement of Oliver, 810 N.W.2d 350, 2012 S.D. 9, ¶ 9 (S.D. 2012).

As a result, SDCL 12-27-20 must be read in conjunction with the more specific provisions regarding municipal authority set forth in SDCL 9-17-1 and 9-17-3. These statutes, specific to the municipal power to form an organization of municipalities, were initially enacted in 1955. They provide:

 $<sup>^{\</sup>rm 1}$  The fact that the Municipal League has sources of revenue other than municipal membership dues is not relevant to the analysis herein.

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- 9-17-1. Formation of municipality organization authorized—Purposes. The governing body of any municipality of this state is hereby authorized to join with the governing body of any other municipality or municipalities of this state in the formation of an organization of municipalities of this state for the purposes of securing concerted action among such municipalities in behalf of such matters, measures, and municipal affairs as such organization shall determine to be beneficial to, in the common interest of, and as concerns and pertains to said municipalities.
- 9-17-3. Municipal payment of dues and delegate expenses for organization. Any municipality which shall join or become a member of such municipal organization is hereby authorized and empowered, by ordinance, to annually appropriate funds for the payment of reasonable annual dues in said organization as the same may be assessed and to pay the expenses of designated representatives or delegates as provided in § 9-17-4, in attending the meetings of said organization.

SDCL 12-27-20, enacted in 2007, provides:

Expenditure of public funds to influence election outcome prohibited. The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question.

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SDCL 9-17-1 clearly authorizes the formation of an organization of municipalities that takes "concerted action" regarding "measures" determined to be beneficial to the common interest of the member municipalities. SDCL 9-17-3 specifically allows municipalities to make a payment of annual dues from its public funds to the municipal organization. The South Dakota Municipal League is an organization formed under this authority.

SDCL 12-27-20 prohibits municipalities and other governmental entities from expending public funds on advocating for "ballot questions." The express terms used in SDCL 12-27-20 do not refer to municipal organizations established pursuant to SDCL 9-17-1. SDCL 12-27-20 also does not reference the dues paid by member municipalities to the Municipal League under SDCL 9-17-3, or the other funds generated by the Municipal League's business activities.

Applying the rules of statutory construction, the general statute (SDCL 12-27-20) must be construed with, and its application limited by, SDCL 9-17-1 and 9-17-3. The specific statutory provisions authorizing the formation of a municipal organization with funding from municipalities to advocate on measures, take precedence over the general prohibition on municipal activities in SDCL 12-27-20. SDCL 12-27-20 therefore does not apply to a municipal organization's advocating a position on ballot measures, because that activity is specifically authorized by SDCL 9-17-1 and 9-17-3.

The Legislature is presumed to know the law in existence when it enacted SDCL 12-27-20. State ex rel Kornmann v. Larson, 138 N.W.2d 1, 10 (S.D. 1965). The Legislature therefore must have understood that the annual dues from municipalities to the South Dakota Municipal League would be used in advocating positions on ballot measures. If it intended to prohibit the Municipal League from advocating on such measures, it could have repealed SDCL 19-17-1 and 19-17-3 or specifically included "municipal"

The term "measures" is not defined inSDCL 9-17-1. However, it is a term used with reference to elections in both the South Dakota Constitution and in other statutes. S.D. Const. Art. III, § 1; SDCL 21-1. While some statutes use the terms "initiated measures," "referred laws" and "constitutional amendments" to distinguish between the types of involved measures, the term "measures" is used generally to refer to all three. See, e.g., SDCL 2-1-7, 2-1-12, 2-1-17, 12-13-2, 12-13-11, 12-13-23.

 $<sup>^3</sup>$ The term "ballot questions" is used to refer to measures appearing on the ballot. See, e.g., SDCL ch. 12-13.

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organization" in the list of entities to which SDCL 12-27-20 applies. It did not do so.

Sincerely,

Marty J. Jackley ATTORNEY GENERAL

MJJ/lde

cc: Yvonne Taylor, South Dakota Municipal League

Jason Gant, Secretary of State

Jim Seward, Counsel to the Governor